

## ADMINISTRATIVE RULES

### Fiscal Estimate & Economic Impact Analysis

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1. Type of Estimate and Analysis

☒ Original   ☐ Updated   ☐ Corrected

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2. Administrative Rule Chapter, Title and Number

ATCP 87, Maple Syrup and Processing

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3. Subject

Adopting new federal standards for maple syrup grading, defining standards for facilities used only for thermal concentration of maple sap, and addressing standards and processes for new products derived from maple sap.

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4. Fund Sources Affected

☒ GPR   ☐ FED   ☒ PRO   ☐ PRS   ☐ SEG   ☐ SEG-S

5. Chapter 20, Stats. Appropriations Affected

20.115(1)(gb)

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6. Fiscal Effect of Implementing the Rule

<input checked="" type="checkbox"/> No Fiscal Effect	<input type="checkbox"/> Increase Existing Revenues	<input type="checkbox"/> Increase Costs
<input type="checkbox"/> Indeterminate	<input type="checkbox"/> Decrease Existing Revenues	<input type="checkbox"/> Could Absorb Within Agency's Budget
		<input type="checkbox"/> Decrease Cost

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7. The Rule Will Impact the Following (Check All That Apply)

<input checked="" type="checkbox"/> State's Economy	<input checked="" type="checkbox"/> Specific Businesses/Sectors
<input type="checkbox"/> Local Government Units	<input type="checkbox"/> Public Utility Rate Payers
	<input checked="" type="checkbox"/> Small Businesses <b>(if checked, complete Attachment A)</b>

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8. Would Implementation and Compliance Costs Be Greater Than \$20 million?

☐ Yes   ☒ No

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9. Policy Problem Addressed by the Rule

The maple syrup industry is becoming more complex, but Wisconsin wishes to allow traditional maple syrup producers to continue operating with a minimal regulatory burden while adequately regulating businesses using more complex processing techniques to make maple syrup and other products derived from maple sap. The USDA has promulgated new grade standards for maple syrup and many Wisconsin maple syrup producers want Wisconsin maple syrup grade standards to mirror the new federal standards and thereby ensure equal access of identifiably Wisconsin maple syrup to the national and international marketplace. Industry is developing several new products derived from maple sap. In order to prevent sale of adulterated or misbranded products, it is essential to define these products and specify facility and process requirements that must be met by businesses making these products.

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10. Summary of the businesses, business sectors, associations representing business, local governmental units, and individuals that may be affected by the proposed rule that were contacted for comments.

All maple syrup producers could be positively affected by new grade standards, should they choose to grade their syrup. Businesses that add processing steps more complex than the basic thermal concentration of maple sap done at a "sugar shack" may have to upgrade their facilities. The proposed rule will have no effect on local governmental units.

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11. Identify the local governmental units that participated in the development of this EIA.

Producers of maple syrup and other products from maple sap are generally food processors who are regulated by the Department of Agriculture, Trade and Consumer Protection, which was the sole agency participating in this EIA. Local governmental units are not typically impacted by this rule unless the operation is a very small retail operation selling the products, so our Agent Health Departments did not participate in the development of this EIA.

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12. Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

The proposed rule change neither eliminates a fee nor creates one. Its impact would be favorable for business that are currently only thermally reducing sap to syrup. These facilities would likely not require upgrading to meet the revised

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standards in the proposed rule. The proposed rule may necessitate a facility upgrade for businesses adding processing steps more complex than thermal concentration of maple sap, such as reverse osmosis. The modernization of Wisconsin's maple syrup grade standards may enhance sale of Wisconsin maple syrup in other states and countries.

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#### **13. Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule**

Failure to make the proposed rule change could adversely impact the traditional segment of the industry by requiring upgrades at facilities used only for thermal concentration of maple sap, in order to meet existing food processing plant standards. It could also result in the maple syrup produced in Wisconsin being sold under standards that are only commonly understood here. Not changing the rule could allow a range of different maple sap-derived products to be sold under the same product name, with resulting consumer confusion. Adapting Wisconsin maple syrup grade standards that mirror new federal standards will allow Wisconsin's syrup to compete in the same markets as syrup from other states. The proposed rule will also allow new and innovative products to be developed, safely produced, and marketed throughout the nation and outside our borders. The result will be an enhancement of Wisconsin's "brand".

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#### **14. Long Range Implications of Implementing the Rule**

Implementing this rule will ensure that Wisconsin continues to maintain a substantial presence in the maple syrup market as well as have standing in the marketplace for new and innovative products derived from maple sap. It will enable Wisconsin's maple sap and syrup-related businesses to continue to fairly compete against similar businesses in other states. It will ensure that the range of maple sap processing operations receive the appropriate level of regulatory oversight to prevent product adulteration or misbranding.

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#### **15. Compare With Approaches Being Used by Federal Government**

Businesses that only harvest maple sap are not subject to federal food safety rules, but businesses that convert the sap to maple syrup or any other food are considered "facilities" and subject to the Food Safety Modernization Act (FSMA) and the rules that implement FSMA. There is a federal standard of identity for maple syrup, and maple syrup producers involved in interstate commerce must follow Good Manufacturing Practice as spelled out in federal regulations. The proposed rule adopts the voluntary federal grade standards for maple syrup, with only minor modifications.

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#### **16. Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)**

Retail sales of maple syrup in Illinois are under the jurisdiction of state or local health departments and regulations modeled on the FDA Food Code. Therefore, maple syrup sold at retail must originate in a facility subject to FDA or state inspection. Maple syrup is not one of the foods exempted from food processing rules via the Illinois Cottage Food Bill. Illinois does not license food processing plants. Production of maple syrup for wholesale is done in facilities subject to state rules that largely adopt FDA regulations.

Michigan licenses maple syrup producers who sell their product wholesale but does not require a retail food establishment license for sales of maple syrup made by a licensed producer. Maple syrup producers in Michigan can qualify for a cottage foods exemption from the food licensing requirement. Maple syrup producers who meet licensing exemptions (less than \$15,000 annually in sales) must follow the same labeling requirements for their maple syrup as those outlined for other cottage food products. (Note: because maple syrup cannot be processed in a home kitchen, the label must read, "Processed in a facility not inspected by the Michigan Department of Agriculture & Rural Development." Maple syrup producers who meet the licensing exemptions still must meet all requirements of the Michigan Food Law, including sanitation, building construct and design, employee hygiene, etc.

Iowa considers maple syrup an agricultural commodity, and thus not subject to state inspection. Notwithstanding, Iowa food processing plant regulations largely cite FDA rules. Iowa also exempts cottage food operations from licensing requirements.

In Minnesota, a license is required to legally sell maple syrup to the public unless all sap is obtained from the maple syrup producer's land and no other "off farm" inputs are used in making the product (e.g. sap from neighbors' trees). However, all maple syrup operations selling to the public are subject to inspections by the Minnesota Department of Agriculture. Labeling requirements for maple syrup are the same as for other foods under Minnesota jurisdiction.

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17. Contact Name

Pete Haase, Director-Bureau of Food Safety and Inspection

18. Contact Phone Number

(608) 224-4711

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## ADMINISTRATIVE RULES Fiscal Estimate & Economic Impact Analysis

### ATTACHMENT A

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1. Summary of Rule's Economic and Fiscal Impact on Small Businesses (Separately for each Small Business Sector, Include Implementation and Compliance Costs Expected to be Incurred)

This rule is expected to have a positive impact on small businesses seeking to have their maple syrup graded and marketed in competition with maple syrup from other states. Most small businesses with facilities used only for thermal concentration of maple sap to syrup will not be affected by the revised facility requirements, although it is possible that a few businesses will have to upgrade their facilities. Businesses adding more complex processes, such as reverse osmosis, to a thermal concentration facility may have to upgrade their facilities, as might businesses whose storage and packaging facilities don't meet existing food processing plant requirements. Businesses processing maple-derived water or un-concentrated or partially concentrated maple sap may also face facility-upgrade costs to comply with food processing plant standards.

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2. Summary of the data sources used to measure the Rule's impact on Small Businesses

The agency reviewed extensive photographic documentation of existing licensed maple syrup processing facilities, and reviewed communications received from the Wisconsin Maple Syrup Producers Association and its members.

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3. Did the agency consider the following methods to reduce the impact of the Rule on Small Businesses?

- ☒ Less Stringent Compliance or Reporting Requirements
- ☐ Less Stringent Schedules or Deadlines for Compliance or Reporting
- ☐ Consolidation or Simplification of Reporting Requirements
- ☐ Establishment of performance standards in lieu of Design or Operational Standards
- ☒ Exemption of Small Businesses from some or all requirements
- ☐ Other, describe:

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4. Describe the methods incorporated into the Rule that will reduce its impact on Small Businesses

A primary focus of this rule is the accommodation of small, often rustic, facilities that solely boil maple sap to produce maple syrup. This rule will allow many such facilities to continue operating without facility upgrades that would be necessary to meet existing food processing plant standards.

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5. Describe the Rule's Enforcement Provisions

Enforcement provisions for these businesses are outlined in s. 97.72 and 97.73 and apply to both small and large businesses. The agency operates under a progressive compliance philosophy involving education of the business operator before these enforcement provisions are used.

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6. Did the Agency prepare a Cost Benefit Analysis (if Yes, attach to form)

- ☐ Yes    ☒ No
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